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Supreme Court of the United States

OCTOBER TERM, 1945.

No. 827

EDITH VANDEVOIR,

Petitioner,

vs.

SOUTHEASTERN GREYHOUND LINES,

Respondent.

BRIEF OF RESPONDENT IN ANSWER TO PETITION FOR WRIT OF CERTIORARI.

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To the Honorable, the Supreme Court of the United States:

STATEMENT OF THE CASE.

Petitioner's statement of the case is essentially correct except for the following omissions and inaccuracies.

In addition to being incorporated under the laws of the State of Kentucky, the respondent has its home office and principal place of business located in that state (R. 26). Its business is that of a common carrier of passengers and it has a Certificate of Authority to operate an interstate motor vehicle transportation system in Indiana (R. 27, 28, 30 to 39) and has appointed an agent in Indiana for

service of process (R. 28). It has not qualified as a foreign corporation to transact intra-state business within the State of Indiana.

At Evansville, Indiana it has a garage, a local manager and a number of employees to service its busses (R. 14). All advertising, ticket selling, loading and unloading of passengers and baggage and general contacts with the traveling public are handled through a separate terminal corporation at Evansville (R. 40, 41).

Respondent's motions for summary judgment addressed to each paragraph of the complaint are based upon the grounds that the cause of action sued upon in Indiana is barred by the one year limitation statute of the State of Kentucky where the defendant resided, by reason of the second clause of Section 2-606, Burns Indiana Statutes 1933 inasmuch as the action was one arising outside of Indiana (R. 5, 12). The statement of petitioner in the petition and brief to the effect that respondent's motion for summary judgment is based upon the grounds that the cause of action is barred by an Indiana limitation statute is inaccurate.

ARGUMENT.

Respondent discusses petitioner's specifications of error in the order in which they are presented in petitioner's brief. The Seventh Circuit held in the case at bar (*Vandevoir* v. *Southeastern Greyhound Lines*, 152 Fed. 2d 150) that the respondent is a resident of the State of Kentucky within the meaning of the second clause of Section 2-606, Burns Indiana Statutes 1933 because it was incorporated in Kentucky notwithstanding that the respondent operated an interstate motor vehicle transportation system in Indiana where the cause of action sued upon was brought.

The second clause of Section 2-606, Burns Indiana Statutes 1933 provides that:

> "* * * when a cause has been fully barred by the laws of the place where the defendant resided, such bar shall be the same defense here as though it had arisen in this state: Provided, That the provisions of this section shall be construed to apply only to causes of action arising without this state."

Being a Kentucky corporation and residing in that state only, the court held that the one year limitation statute (Section 413.140 Ky. Rev. St. 1942) barred the cause of action which arose in the State of Tennessee.

I.

There Is No Conflict Between the Seventh Circuit's Decision in the Case at Bar and Decisions of Other Circuits and of This Court.

(Sections a, b, c, and d, Petitioner's Argument, Pet. Br. Pp. 6 to 12.)

Among the grounds for review asserted by petitioner it is contended that the decision of the Seventh Circuit conflicts with a decision of the Sixth Circuit in *Baltimore and Ohio Railroad Company* v. *Reed,* 223 Fed. 689. The latter case did not involve a construction of the second clause of Section 2-606, Burns Indiana Statutes 1933 but did construe the first clause of the same section of the statute which reads:

> "The time during which the defendant is a non-resident of the state or absent on public business shall not be computed in any of the periods of limitations • • •."

The petitioner argues that whatever interpretation is applied to the term "non-resident" as used in that portion of Section 2-606, Burns Indiana Statutes 1933 is equally applicable to the words "place where the defendant resided" used in the second clause of the same section of the Indiana Statute. The Sixth Circuit held that the defendant in that case was not a non-resident of Indiana within the meaning of the first clause of Section 2-606, Burns Indiana Statutes 1933 because the defendant was at all times amenable to process. No such question is involved in the case at bar.

It is granted that identical words used in different parts of the same statute may ordinarily be presumed to have been intended to have the same meaning. This presump-

tion however is not rigid and readily yields whenever there is such a variation in the connection in which the words are used as reasonably warrants the conclusion that they are employed in different parts of the same act with different meanings. Where the subject matter to which identical words used in different parts of the same statute refer is not the same in the several places where the words are used, or where the conditions are different, the meaning may well vary to meet the purposes of the law to be arrived at by a consideration of the language in which those purposes are expressed and of the circumstances under which the language was employed.

> *Atlantic Cleaners & Dyers* v. *United States of America,* 286 U. S. 427, 433, 76 L. Ed. 1204, 1207.

The first clause of Section 2-606, Burns Indiana Statutes 1933 provides for the tolling of the periods of limitation established by the Indiana Statutes while the defendant is a non-resident of Indiana or absent on public business. The second clause of the same section relates solely to the statutes of a foreign jurisdiction, *i. e.,* "the place where the defendant resided", and creates as a defense in those actions arising beyond the borders of Indiana, the bar of the laws of such foreign jurisdictions. It is quite apparent that the two clauses are each solely unrelated to the other and each is applicable to entirely different situations and the language used in either one can not be interpreted in the same sense in which it is used in the other.

The language "the place where the defendant resided" used in the second clause of the Indiana statute is wholly meaningless except when construed and interpreted as referring to a single state or jurisdiction and as contemplating that a foreign corporation can reside only in

the state of its incorporation. If construed as the petitioner contends, the statute is impracticable of operation for the reason that it would be impossible to determine which jurisdiction should be accepted as the place where a non-resident defendant corporation should be deemed to reside where it carries on its business operations in more than one jurisdiction or in jurisdictions other than the state of its incorporation.

While the petitioner cites *Ryan* v. *State*, 174 Ind. 468, 474 as authority in support of the petitioner's contention that the words "non-resident" used in the first clause of Section 2-606, Burns Indiana Statutes 1933 carries the same meaning as the words "the place where the defendant resided" used in the second clause, it is submitted that the cited case is exactly opposed to the petitioner's contention. The Supreme Court of Indiana in that case said:

> "It is a rule of statutory construction that when the same word or phrase is used more than once in the same section of an act, and the meaning is clear as used in one place, it will be construed to have that meaning wherever used in said act or section, unless there is something therein to show that there is another meaning intended."

In applying the quoted rule the Indiana court held that the words "written" and "in writing" appearing in different sections of the Indiana Statute under consideration could not be construed as having the same meaning because such a construction was plainly repugnant to the intent of the legislature.

The rule of the Ryan case lends further support to respondent's position that the terms in question under the Indiana Act can not be construed as having the same meaning.

The point made by the petitioner to the effect that the

7th Circuit's decision in the case at bar is in conflict with a prior decision of that court in *Dodge Mfg. Co. et al.* v. *Patten*, 60 Fed. 2d 676 even if sound does not constitute grounds for review by certiorari under Rule 38 (5) of the Rules of the Supreme Court.

It is further asserted by petitioner that a conflict exists between the Seventh Circuit's decision in the case at bar and the decision of the 2nd Circuit in *Moss* v. *Atlantic Coast Line R. Co.*, 149 Fed. 2d 701 and the decision of this court in *Nierbo* v. *Bethlehem Shipbuilding Corp.*, 308 U. S. 165, 60 S. Ct. 1, 84 L. Ed. 167. The Nierbo decision relied upon by the 2nd Circuit does not repudiate the rule that a foreign corporation is a citizen or resident only of the state of its incorporation for purposes of jurisdiction. In this decision it was held that by designating an agent to receive process the foreign corporation being a non-resident of the district where suit is brought, consented to be sued there and waived any objections to venue. That this is the extent of the Court's holding in the Nierbo case is clearly recognized in this Court's decision in *Mississippi Publishing Corporation* v. *Murphree* (January 2, 1946) 90 L. Ed. 207 (Adv.). The very basis of the Court's decision in the Nierbo case is that a foreign corporation can not reside in a district other than that wherein it was incorporated. Otherwise there would be no occasion to hold that by designating an agent for process it is held to have waived any objections to the venue of a cause in a district foreign to where it was incorporated.

This Court in *Mississippi Publishing Corporation* v. *Murphree* (January 2, 1946) 90 L. Ed. 207 (Adv.), reaffirms the doctrine that a corporation can have its legal residence only in the state of its incorporation and cites with approval some of the decisions relied upon by the Seventh Circuit in its decision in the case at bar, *i. e.*, *Ex*

parte Schollenberger, 96 U. S. 369, 24 L. Ed. 853; *Seaboard Rice Milling Company* v. *Chicago R. I. & Pac. Ry. Co.,* 270 U. S. 363, 366, 70 L. Ed. 633; *Baltimore & O. R. Co.* v. *Harris,* 12 Wall. (U. S.) 65, 20 L. Ed. 354.

II.

There Is No Conflict in the Seventh Circuit's Decision With State Policy or Local Decisions.

(Sections e and f, Petitioner's Argument, Pet. Br. P. 12 to 15.)

The petitioner's assertion that the decision of the Seventh Circuit is in conflict with state policy presents no grounds for review by certiorari (Rule 38 (5) Supreme Court Rules) and is wholly without merit there being no citation of any authority in point.

Contrary to statements found in petitioner's brief under point "f", pages 13, 14 and 15, the Indiana Supreme Court is in accord with the decision of the Seventh Circuit with respect to the place of residence of a foreign corporation. In the case of *Old Wayne Mutual Life Association of Indianapolis* v. *McDonough,* 164 Ind. 321, 326-328, the Supreme Court of Indiana had before it the question of enforcing a judgment obtained against an Indiana corporation in the State of Pennsylvania where it was transacting business without complying with the Statutes of the State of Pennsylvania. This court reversed the decision of the Indiana Supreme Court in *Old Wayne Mutual Life Association of Indianapolis* v. *McDonough,* 204 U. S. 8, 21-22, 51 L. Ed. 345, 351, on the grounds that the Indiana Court had erred in recognizing as valid the judgment of the Pennsylvania Court obtained without personal service upon the Indiana corporation but this Court and the Indiana Supreme Court

in the two cited cases recognized that a corporation can have no legal existence beyond the boundaries of the sovereignty which created it which means of course that it can have no legal residence in any other place than in the state of its incorporation. In an earlier decision the Supreme Court of Indiana had previously stated that the residence of a foreign corporation is confined to the state where its principal office or place of business is located and where its entire operations are managed, *The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, et al.* v. *The City of Indianapolis,* 147 Ind. 292, 295-296, cited by petitioner (page 14 of petitioner's brief).

The Supreme Court of Indiana in *The New Albany and Salem R. R. Co.* v. *Haskell,* 11 Ind. 301 cited by the petitioner (page 13 of petitioner's brief) did not have before it the question of residence of a foreign corporation. There the sole question was the residence of a domestic railroad corporation in counties in which it had an office or agent under an Indiana venue act.

III.

Petitioner's Contention That the Decision of the Seventh Circuit Is Contrary to the Weight of Authority of Decisions of State Courts Does Not Constitute Grounds for Certiorari and the Decisions Relied Upon Are Distinguishable.

(Section g, Petitioner's Argument, Pet. Br. PP. 15 to 18.)

Petitioner's statement to the effect that the decision of the Seventh Circuit in the case at bar is contrary to the weight of authority of decisions of several state courts, if sound, does not constitute grounds for review by certiorari under Rule 38 (5) of the Rules of the Supreme Court. The state

court decisions relied upon by the petitioner in support of her argument under this heading are either distinguishable upon the facts or hold that a corporation by transacting business in the state where the case was commenced was amenable to process in that state. This question was not before the Court in the case at bar.

Conclusion.

The petition and brief in support thereof fail to disclose any conflict between the Seventh Circuit's decision in the case at bar and that of any other Circuit Court of Appeals.

There is likewise no conflict with any decision of this Court. To the contrary the Seventh Circuit's decision follows the decisions of this Court in establishing that the residence of a foreign corporation is limited solely to the state of its incorporation. The petitioner has likewise failed to substantiate the assertion that the decision of the Seventh Circuit is in conflict with local decisions or local policies. Again, contrary to petitioner's contention the Seventh Circuit's decision is exactly in accord with such decisions of the Indiana Supreme Court as have touched upon the subject of residence of a foreign corporation although it is recognized that the exact question presented in the case at bar has never been before the Indiana Courts.

There is no question of Federal law involved in the case at bar nor has there been a decision of a Federal question which is in any way in conflict with applicable decisions of this Court. It is further submitted that there is no showing of a departure from the accepted and usual course of judicial proceedings or any sanction of such a departure by a lower Court as to call for an exercise of this Court's power of supervision.

In effect the petitioner merely seeks another hearing and

it is submitted that such relief is not afforded to a litigant by certiorari to this Court.

Magnum Import Co. v. *De Spoturno Coty,* 262 U. S. 159, 67 L. Ed. 922.

There is certainly no special or important reason apparent in this case which should impel this court in the exercise of a sound judicial discretion to award the writ, *Layne & Bowler Corp.* v. *Western Well Works, Inc.,* 261 U. S. 387, 393, 67 L. Ed. 712.

Respectfully submitted,

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